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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,451	03/26/2004	Brian J. Wallace	E-15	9128
21253	7590	11/28/2007		
CHARLES G. CALL 215 W. HURON ST APT 2 CHICAGO, IL 60610-3331			EXAMINER BEKERMANN, MICHAEL	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,451	<b>Applicant(s)</b> WALLACE, BRIAN J.	
	<b>Examiner</b> Michael Bekerman	<b>Art Unit</b> 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/26/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. **Claims 3-6 and 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Regarding claims 3-6 and 9-11**, these claims recite the limitations "wherein said letters" and "wherein said set of letters". The parent claims, however, introduce a "set of letters" and a "set of pre-cut letters". It is unclear which set is being limited in each of the offending claims.

**Regarding claim 10**, this claim recites "said set of letters and said toothbrush are displayed together in separate packages". It is unclear how these 2 items may be together, while at the same time being separate.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1, 2, 4, 5, 7-9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Peretz (U.S. Pub No. 2005/0044646).** Peretz teaches a personalization method for a dental hygiene product that includes all of the limitations recited in the above claims.

**Regarding claims 1, 2, 4, 5, 7-9, 11, and 12,** Peretz teaches packaging (Paragraph 0013, "toothbrush kit") a toothbrush with a set of letters that can be affixed to the toothbrush (Figure 1a). Peretz further teaches these letters as being removable from a backing sheet and attachable to the toothbrush with adhesive (Paragraph 0014, "stickers"). Figure 1a depicts these letters as being pre-cut. Figure 1a of Peretz displays the letters as a contrasting black color to the white color of the toothbrush handle.

**Regarding claims 14 and 15,** the letters of Peretz are labels that are capable of being arranged in such as way as to indicate a time (such as to spell out the name of a month or day).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 3, 10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peretz (U.S. Pub No. 2005/0044646).**

**Regarding claims 3 and 13,** Peretz does not appear to specify what the stickers are to be made out of. Vinyl, however, is an old and well known material that is commonly used in the making of stickers to provide greater strength, flexibility, and resistance to tearing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create the Vinyl stickers to take advantage of the variety of features that are custom to Vinyl.

**Regarding claim 10,** Peretz does not appear to specify the letters and the toothbrush as being purchased separately. Label makers, however, are old and well known devices for personalizing items. It would have been obvious to one having ordinary skill in the art at the time the invention was made to advertise label makers or other sets of stickers and personalizing instruments with the toothbrush of Peretz in case the letters of Peretz are not enough for the consumer and the consumer would like to purchase additional personalization instruments.

**4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peretz (U.S. Pub No. 2005/0044646) in view of Whitney (U.S. Pub No. 2003/0166373).**

**Regarding claim 6,** Peretz does not appear to specify the type of packaging in which the toothbrush and letters are enclosed. Whitney teaches a toothbrush contained

within a transparent packaging (Figures 1 and 26). It would have been obvious to one having ordinary skill in the art at the time the invention was made for Peretz to package a toothbrush in a similar manner because the consumer can better see the product, which provides for better marketing and greater potential sales.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to personalizing instruments used on handles of toothbrushes and other items:

U.S. Pub No. 2003/0208145 to Stewart

U.S. Patent No. 4,589,159 to Streibel

U.S. Patent No. 5,875,796 to Silver-Isenstadt

U.S. Patent No. 5,487,203 to Brach Jr.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bekerman whose telephone number is (571) 272-3256. The examiner can normally be reached on Monday - Friday, 7:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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